



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

California Regional Water Quality Control Board, San Diego Region

February 19, 2015

Certified Mail – Return Receipt Requested
Article Number: 7010 1060 0000 4953 0211

Mr. Arne Gunnarsson
Gunnarsson Grove Trust
38828 Harris Spur Truck Trail
Fallbrook, CA 92028

In reply refer to:
cmeans/CW813058

Subject: Notice of Violation No. R9-2015-0039 for Illegal Fill of Unnamed Creek, Gunnarsson Grove, Fallbrook, CA.

Mr. Gunnarsson,

Enclosed is Notice of Violation (NOV) No. R9-2015-0039 alleging violations of California Water Code (CWC) Section 13260 and 13376. As described in the NOV, the violations subject you to further enforcement pursuant to the CWC. The San Diego Water Board reserves the right to take any enforcement action authorized by law.

The San Diego Water Board would like to set up a site visit and work cooperatively with you to resolve these violations. In making the determination of whether and how to proceed with further enforcement action, the San Diego Water Board will consider the severity and effect of the violation, the level of cooperation, the time it takes to correct the identified violations, and the sufficiency of the corrections. Please contact us at your earliest opportunity.

If you intend to submit any documents to the San Diego Water Board, you can submit documents in electronic format via email to SanDiego@waterboards.ca.gov. Electronic documents submitted to the San Diego Water Board must include the following identification numbers in the header or subject line: cmeans/CW813058.

For questions pertaining to the subject matter, or to schedule a site visit, please contact Christopher Means at (619) 521-3968 or cmeans@waterboards.ca.gov.

Respectfully,

Chiara Clemente
Senior Environmental Scientist
Regional Water Quality Control Board

HENRY ABERBINAL, CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

2375 Northside Drive, Suite 100, San Diego, CA 92108 | (619) 516-1990 | www.waterboards.ca.gov/sandiego



Mr. Arne Gunnarsson
Gunnarsson Grove Trust
NOV No.R9-2015-0039

February 19, 2015

CMC:cjm

Enclosures:

Notice of Violation R9-2015-0039

Inspection Report January 23, 2015

CC (by email with enclosures):

Ms. Therese O'Rourke Bradford, USACE: Therese.O.Bradford@usace.army.mil

Ms. Kelley Dorsey, San Diego Water Board: Kelly.Dorsey@waterboards.ca.gov

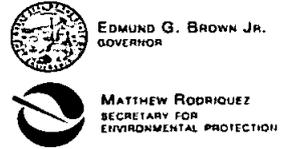
Ms. Nicole Gergans, San Diego Water Board: Nicole.Gergans@waterboards.ca.gov

Mr. Victor Vasquez, Division of Water Rights: vvasquez@waterboards.ca.gov

U.S. EPA, OWOW, Region 9
R9-WTR8-Mailbox@epa.gov

State Water Resources Control Board, Division of Water Quality
401 Water Quality Certification and Wetlands Unit
Stateboard401@waterboards.ca.gov

Tech Staff Info & Use	
Place ID	813058



California Regional Water Quality Control Board, San Diego Region

February 19 , 2015

**NOTICE OF VIOLATION
No. R9-2015-0039**

Mr. Arne Gunnarsson
Gunnarsson Grove Trust
38828 Harris Spur Truck Trail
Fallbrook, CA 92028

Gunnarsson Grove Property, Fallbrook,
CA

**Violations of California Water Code
Section 13260 and 13376**

You are hereby notified that you are in violation of California Water Code (CWC) Section 13260(a) which requires that any person discharging waste or proposing to discharge waste within any region, other than to a community sewer system, which could affect the quality of the waters of the State, shall file a report of waste discharge (ROWD). The discharge of dredged or fill material constitutes a discharge of waste that could affect the quality of waters of the State.

Additionally, you are in violation of CWC Section 13376 for failure to file a complete application for an individual Clean Water Act (CWA) Section 401 Water Quality Certification. The State of California largely relies on Section 401 of the federal Clean Water Act (CWA) (33 U.S.C. § 1341) to regulate discharges of dredged or fill material to waters of the State. Section 401 requires an applicant to obtain "water quality certification" from California that the project will comply with State water quality standards before certain federal licenses or permits may be issued. The permits subject to section 401 include permits for the discharge of dredged or fill materials (CWA section 404 permits) issued by the U.S. Army Corps of Engineers (Corps).

Such violations subject you to additional enforcement action by the San Diego Regional Water Quality Control Board (San Diego Water Board), including administrative enforcement orders requiring you to cease and desist from violations, or to clean up waste and abate existing or threatened conditions of pollution or nuisance; administrative civil liability in amounts of up to \$10,000 per day per violation; referral to the State Attorney General for injunctive relief; and, referral to the District Attorney for criminal prosecution.

HENRY ABARBANEL, CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

2375 Northside Drive, Suite 100, San Diego, CA 92108 | (619) 516-1990 | www.waterboards.ca.gov/sandiego



A. Background

The Gunnarson Grove property (Assessor Parcel No. 102-084-03-00) is a 20.5 acre parcel located in the Fallbrook CA off Via Cordoniz Road. The property is presently being used for agricultural operations. A public records search indicates the property is owned by the Gunnarson Grove Trust, and lists Arne Gunnarsson as the responsible party.

On January 23, 2015 San Diego Water Board Inspectors responded to a complaint of possible streambed alterations and unauthorized water diversion at the Gunnarson Grove property. The complaint alleged that a concrete dam had been constructed in a small perennial creek on the property.

B. Violations of CWA Section 13260 and 13376

1. Failure to provide a Report of Waste Discharge for the Discharge of Fill (i.e. waste) to Waters of the State.

a. CWC Section 13260 (a)(1) states:

"Each of the following persons shall file with the appropriate regional board a report of the discharge, containing the information that may be required by the regional board:

- (1) A person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.

2. Failure to Obtain a CWA Section 401 Water Quality Certification for Impacts to Waters of the US/State

a. CWC Section 13376 states in part:

"A person who discharges pollutants or proposes to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state or a person who discharges dredged or fill material or proposes to discharge dredged or fill material into the navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge in compliance with the procedures set forth in Section 13260."

3. Observations: Based on a review of San Diego Water Board files and the online Division of Water Rights database, no state authorization or permit was found for Mr. Gunnarsson to construct a dam in the creek on his property or to impound and divert water from the stream for agricultural purposes. Based on the findings of the brief inspection on January 23, 2015 it was confirmed that the structure is present.

The dam restricts the velocity and volume of flow in the stream, which leads to higher temperatures and promotes the growth of algae behind and downstream of the structure. This degrades the water quality of the stream, and impacts the Warm Freshwater Habitat (WARM) beneficial use of the stream. Algal blooms were noted during the inspection behind the dam and throughout the downstream segment of the stream on the adjacent property. The unauthorized diversion of water from the pump house structure also has the potential to negatively impact the downstream agricultural and riparian beneficial uses of the stream. If the dam is found to be an unauthorized discharge of waste it is in violation of CWC Section 13260(a)(1) and CWC Section 13376.

C. Recommendations

1. Mr. Gunnarsson should contact the San Diego Water Board Compliance Assurance Unit (CAU) staff, and State Water Board Division of Water Rights staff to discuss the alleged violations, and the potential actions necessary to bring the property into compliance with applicable State regulations.

The contact information for the San Diego Water Board CAU staff is:

Christopher Means
Environmental Scientist
San Diego Water Board
Phone: 619-521-3365
Email: cmeans@waterboards.ca.gov

The contact information for Division of Water Rights staff is:

Victor Vasquez
Senior Water Resource Control Engineer
Enforcement Unit 3, Division of Water Rights
State Water Resources Control Board
Phone: 916-323-9407
Email: vvasquez@waterboards.ca.gov

D. Summary of Potential Enforcement Options

Failure to address these violations may subject you to additional enforcement by the San Diego Water Board or State Water Resources Control Board, including a potential civil liability assessment of \$10,000 per day of violation (Water Code section 13385) and/or any of the following enforcement actions:

Other Potential Enforcement Options	Applicable Water Code Section
Technical or Investigative Order	Sections 13267
Cleanup and Abatement Order	Section 13304
Cease and Desist Order	Sections 13301-13303
Time Schedule Order	Sections 13300, 13308

In addition, the San Diego Water Board may consider referring the matter to other resource agencies, referring the matter to the State Attorney General for injunctive relief, and/or referral to the municipal or District Attorney for criminal prosecution.

In the subject line of any response, please include the information located in the heading of this letter: "in reply refer to." Questions pertaining to this Notice of Violation should be directed to Christopher Means at (619) 521-3365 or cmeans@waterboards.ca.gov.



Chiara Clemente
Senior Environmental Scientist
San Diego Water Board

CMC:cjm

Enclosure: San Diego Water Board Inspection Report 1/23/2015

Tech Staff Info & Use	
Place ID	813058

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD - SAN DIEGO REGION
WATERSHED PROTECTION PROGRAM**

**CITIZEN COMPLAINT
INSPECTION REPORT**

FACILITY: Harris Trail Spur Road, Via Cordoniz, Fallbrook **INSPECTION DATE/TIME:** 01/23/2015;1:00

CIWQS Place ID No.: CW-222931

REPRESENTATIVE(S) PRESENT DURING INSPECTION:

NAME: Nicole Gergans

AFFILIATION: San Diego Water Board

NAME: Christopher Means

AFFILIATION: San Diego Water Board

Arne Gunnarsson
NAME OF OWNER, AGENCY OR PARTY RESPONSIBLE FOR DISCHARGE

Gunnarsson Grove Trust
FACILITY OR DEVELOPER NAME (if different from owner)

38828 Harris Spur Truck Trail
Fallbrook, CA 92028
OWNER MAILING ADDRESS

FACILITY ADDRESS

OWNER CONTACT NAME AND PHONE #

FACILITY OR DEVELOPER CONTACT NAME AND PHONE #

APPLICABLE WATER QUALITY LICENSING REQUIREMENTS:

- | | |
|--|---|
| <input type="checkbox"/> MS4 URBAN RUNOFF REQUIREMENTS | <input type="checkbox"/> GENERAL OR INDIVIDUAL WASTE DISCHARGE REQUIREMENTS OR NPDES |
| <input type="checkbox"/> CONSTRUCTION GENERAL PERMIT | <input type="checkbox"/> GENERAL OR INDIVIDUAL WAIVER OF WASTE DISCHARGE REQUIREMENTS |
| <input type="checkbox"/> CALTRANS GENERAL PERMIT | <input checked="" type="checkbox"/> SECTION 401 WATER QUALITY CERTIFICATION |
| <input type="checkbox"/> INDUSTRIAL GENERAL PERMIT | <input type="checkbox"/> CWC SECTION 13264 |

INSPECTION TYPE (Check One):

- "A" TYPE COMPLIANCE--COMPREHENSIVE INSPECTION IN WHICH SAMPLES ARE TAKEN. (EPA TYPE S)
- "B" TYPE COMPLIANCE--A ROUTINE NONSAMPLING INSPECTION. (EPA TYPE C)
- NONCOMPLIANCE FOLLOW-UP--INSPECTION MADE TO VERIFY CORRECTION OF A PREVIOUSLY IDENTIFIED VIOLATION.
- ENFORCEMENT FOLLOW-UP--INSPECTION MADE TO VERIFY THAT CONDITIONS OF AN ENFORCEMENT ACTION ARE BEING MET.
- COMPLAINT--INSPECTION MADE IN RESPONSE TO A COMPLAINT.
- PRE-REQUIREMENT--INSPECTION MADE TO GATHER INFO. RELATIVE TO PREPARING, MODIFYING, OR RESCINDING REQUIREMENTS.
- NO EXPOSURE CERTIFICATION (NEC) - VERIFICATION THAT THERE IS NO EXPOSURE OF INDUSTRIAL ACTIVITIES TO STORM WATER.
- NOTICE OF TERMINATION REQUEST FOR INDUSTRIAL FACILITIES OR CONSTRUCTION SITES - VERIFICATION THAT THE FACILITY OR CONSTRUCTION SITE IS NOT SUBJECT TO PERMIT REQUIREMENTS.
- COMPLIANCE ASSISTANCE INSPECTION - OUTREACH INSPECTION DUE TO DISCHARGER'S REQUEST FOR COMPLIANCE ASSISTANCE.
- MS4 AUDIT - AN EVALUATION OF AN MS4 PROGRAM OR PROGRAM COMPONENT THAT COULD POSSIBLY LEAD TO ENFORCEMENT. IT MUST INCLUDE A SITE VISIT.

INSPECTION FINDINGS:

Y WERE VIOLATIONS NOTED DURING THIS INSPECTION? (YES/NO/PENDING SAMPLE RESULTS)

Facility: Gunnarson Grove, Fallbrook CA
Inspection Date: 01/23/2015

I. COMPLIANCE HISTORY / PURPOSE OF INSPECTION

The San Diego Water Board received an anonymous citizen complaint regarding a potential unauthorized water diversion and placement of unpermitted fill (concrete and wood dam) within a small perennial stream located on the Gunnarson Grove Parcel (APN# 102-084-03-00) located directly off Via Cordoniz Road. The 20.5 acre parcel is an active agricultural operation, owned by the Gunnarsson Family Trust since 1979, and public records list the owner to be Mr. Arne Gunnarson.

San Diego Water Board staff reviewed the State Water Resource Control Board Division of Water Rights database to determine if any permitted water extraction project had been applied for on the subject property. The results showed no application or authorization for the alleged project.

The creation of the concrete and wood dam within the creek would also have necessitated the issuance of a Clean Water Act Section 401 water quality certification and/or waste discharge requirements from the San Diego Water Board, and authorizations from the US Army Corps of Engineers and the California Department of Fish and Wildlife. A review of San Diego Water Board files showed no 401 application for construction of this project was received.

II. FINDINGS

1. At approximately 1:30 pm on January 23, 2015, San Diego Water Board inspectors Christopher Means and Nicole Gergans arrived at the entrance to the property off Via Cordoniz Road. A for sale sign was posted at the entrance to the property (see Photo 1), and inspectors observed a car parked in proximity to a workshed on the property. Inspectors did not note any No Trespassing signs posted at the entrance to the property.



Photo 1

For Sale sign at entrance to the property.

Facility: Gunnarson Grove, Fallbrook CA
Inspection Date: 01/23/2015

2. Inspectors entered the property in an attempt to contact someone in charge, to discuss the alleged violations. As the inspectors were walking down the driveway there appeared to be a large amount of cut up wood and other organic material that had been dumped within the stream bed constricting its flow (see Photo 2).



Photo 2

Cut wood and organic debris in stream.

3. While looking for an onsite responsible party to discuss the alleged violations, inspectors observed a dam structure constructed of cement and wood in the stream (see Photo 3), and pump house and associated piping adjacent to the stream and dam (see Photo 4). Inspectors were unable to contact anyone on site and left the property at approximately 1:45 pm.

Facility: Gunnarson Grove, Fallbrook CA
Inspection Date: 01/23/2015



Photo 3

Concrete and wood dam structure. This constitutes an unauthorized discharge fill to waters of the US and State. Note algal growth behind structure.



Photo 4

Pump house enclosure directly adjacent to stream.

Facility: Gunnarson Grove, Fallbrook CA
 Inspection Date: 01/23/2015

- The structure reduces flow and velocity of the stream downstream, leading to warmer slower water and promoting algal blooms. This was apparent on the adjacent property's stream where a long portion of the stream had a bright orange algal bloom along the entire bottom of the stream (see Photo 5).



Photo 5

Orange algae was 3" thick and prevalent all along the lower reach of the stream on the adjacent property.

III. RECOMMENDATIONS

- Draft a Notice of Violation
- Request a site visit with owner to discuss potential voluntary compliance and removal of dam structure and cleanup of cut up wood out of creek.
- The San Diego Water Board should coordinate any potential enforcement action with State Board Division of Water Rights Enforcement Unit.

IV. SIGNATURE SECTION

Christopher Means
 STAFF INSPECTOR

SIGNATURE

01/23/2015
 INSPECTION DATE

Chiara Clemente
 REVIEWED BY SUPERVISOR

SIGNATURE

2/19/15
 DATE